IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

SUMM.SUIT NO.190 OF 2003

M/s Talcherkars Display Systems.. Plaintiff

versus

M/s Waaree Instru. Ltd.. Defendant

Mr N.L.Makhijani for Plaintiff

CORAM : D.G. KARNIK, J

DATED : 19th April 2005.

P.C:-

1. Heard learned counsel for the plaintiff. None present for the defendant. The plaintiff had filed on record affidavit of service of the Summons for Judgment dated 9th February, 2005 stating the packet containing the Summons for Judgment sent to the defendant's advocate was returned undelivered with an endorsement "unclaimed/intimation. In view of this, the plaintiff was directed to re-serve the Summons for Judgment on the defendant. The plaintiff has accordingly re-served the Summons for Judgment on the defendant through the Sheriff of Mumbai. A joint

affidavit of service dated 7th April, 2005 sworn in by Mr Datta Redkar and Mr K.K.Naik is tendered. The affidavit is taken on record. Despite service of the Summons for Judgment on 31st March, 2005 the defendant has not filed an application for leave to defend nor filed any affidavit in reply.

2. Learned counsel for the defendant hands in the documents along with the list. The documents are taken on record and collectively marked Exhibit A.

3. I have perused the plaint and the documents filed on record. In the absence of any application for leave to defend, the averments made in the plaint are deemed to be accepted. The plaintiff is entitled to a decree under order 37 Rule 3 (6) of the Code of Civil Procedure. Hence, Summons for Judgment is made absolute and suit of the plaintiff is decreed as follows :

> " The defendant shall pay to the plaintiff a sum of Rs.1,08,185/- together with interest on the principal sum of Rs.77,000/- at 9 % p.a. from the date of the suit till payment and all costs of the suit. "

D.G.KARNIK, J